

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MICHAEL S.MILEY

NO.04-365 ERIE

v.
KARLA WEBB,ET AL

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS

AND NOW, Comes the Plaintiff Michael S. Miley who respectfully moves this Court to deny the defendant's motion to dismiss or for summary judgment upon the following grounds:

1. That contrary to the Defendant's claims that plaintiff is "eligible" for parole and has not been subjected to an ex post facto application of 42 PA.CSA §9718.1, Plaintiff contends that for parole purposes the word "eligible" is misleading due to the fact that the board is requiring Plaintiff to successfully complete a treatment program for sex offenders and the parole board does not consider this to be an option but rather a requirement for parole eligibility and plaintiff avers that the statute itself(42 PA. CSA §9718.1 states that the sex offender treatment program is a mandatory requirement for parole eligibility. With that in mind Plaintiff avers that contrary to defendant's counsel's semantics the word "eligible" is misleading when applied to Plaintiff in that, The board will not consider him eligible for parole until he has successfully completed the sex offender treatment program prescribed. This in itself is an ex post facto violation of the US Constitution in that Plaintiff's offense occurred prior to the enactment of 42 PA. CSA §9718.1 which made sex offender treatment a mandatory requirement for parole eligibility for those offenders whose offenses occurred on or after it's enactment on December 20, 2000.

2. Petitioner contends that the parole board will not consider him "eligible" for parole until he completes this program as evidenced by the board's decisions each time plaintiff has been reviewed for parole. Plaintiff avers that since his offense occurred prior to the enactment of 42 PA.CSA§9718.1 the boards denial of parole due to plaintiff's failure to complete the sex offender treatment program is an ex post facto violation see. MICKENS-THOMAS V. VAUGHN, 355 F.3d 294, (C.A.3(Pa.)2004) which addresses this very issue and is the controlling precedent.

WHEREFORE, for the above stated reasons Plaintiff prays this Court to deny the defendant's motion to dismiss or for summary judgment.

Respectfully Submitted,

michael S. miley

Michael S. Miley, August 9, 2005

CERTIFICATE OF SERVICE

I, Michael Miley do hereby certify that I have served a true and correct copy of the foregoing upon the Counsel for the defendants by placing same in the US Mail, first class postage paid and addresses as follows:

Scott A. Bradley, ESQ.
Attorney General's office 564 Forbes Ave. 6th fl.
Pittsburgh, Pa. 15219

Respectfully Submitted,

michael S. Miley
Michael S. Miley, Plaintiff
August 9 2005